

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3	AT&T COMMUNICATIONS OF THE)Docket No. UT-020406
	PACIFIC NORTHWEST, INC.,)Volume IX
4	Complainant,)Pages 330-408
)
5	vs.)
)
6	VERIZON NORTHWEST, INC.,)
	Respondent.)
7	_____)

8

9 A prehearing conference in the

10 above matter was held on May 1, 2003, at 9:04 a.m.,

11 at 1300 Evergreen Park Drive Southwest, Olympia,

12 Washington, before Administrative Law Judge MARJORIE

13 R. SCHAER.

14 The parties were present as

15 follows:

16 AT&T COMMUNICATIONS OF THE PACIFIC

17 NORTHWEST, INC., by Gregory J. Kopta, Attorney at

18 Law, Davis, Wright, Tremaine, LLP, 2600 Century

 Square Building, 1501 Fourth Avenue, Seattle,

 Washington 98101.

19 VERIZON NORTHWEST, INC., by Judith

20 Endejan, Attorney at Law, Graham & Dunn, Pier 70,

 2801 Alaskan Way, Seattle, Washington 98121.

21 WORLDCOM, INC., by Michel Singer

22 Nelson, Attorney at Law, 707 17th Street, Denver,

 Colorado, 80202.

23

24

25 Barbara L. Nelson, CCR
 Court Reporter

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1 THE COMMISSION, by Sally G.
2 Johnston (for Shannon Smith,) Assistant Attorney
3 General, 1400 Evergreen Park Drive, S.W., P.O. Box
4 40128, Olympia, Washington, 98504-0128.

5 PUBLIC COUNSEL, by Robert
6 Cromwell, Assistant Attorney General, 900 Fourth
7 Avenue, Suite 2000, Seattle, Washington, 98164
8 (Appearing via teleconference bridge.)

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1 JUDGE SCHAER: Let's go on the record.
2 This morning we're having a prehearing conference for
3 marking exhibits and preparing for hearing in Docket
4 Number UT-020406, which is a complaint case brought
5 by AT&T versus Verizon. Today's date is May 1st,
6 2003, and we are meeting at 9:00 in the morning in
7 the Commissioners' second floor hearing room in the
8 Commissioners' headquarters.

9 My name is Marjorie Gray Schaer, and I will
10 be the Administrative Law Judge assigned to this
11 proceeding. And I have distributed, before we
12 started this morning, three documents, the first
13 being an agenda, the second being an order of
14 witnesses and estimates of cross-examination time,
15 and the 3rd being my staff and my efforts at getting
16 a current accurate exhibit list from all of the
17 different pieces that we have been working with.

18 And so I've asked the parties to glance at
19 the agenda for a moment or two and let the Bench know
20 if there's anything else they would like to see on
21 the agenda or anything they would like to take in a
22 different order. And unless someone jumps up and
23 says that, we'll move first to the order of witnesses
24 and estimates of cross-examination.

25 So we are now going to look at the order of

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1 witnesses and estimates of cross-examination. I have
2 to say that we have scheduled all or part of five
3 days for this hearing. Your normal hearing morning
4 gives you two hours of hearing time, your normal
5 afternoon hearing gives you three hours and 15
6 minutes of hearing time. According to these
7 estimates, we have 16.25 hours of cross from the
8 parties, and at this point, using all of the time
9 that's scheduled for the hearing, we have 16 hours of
10 hearing time.

11 So there are some items on here -- I'm
12 hoping that we hear from WorldCom and Public Counsel
13 this morning to see if their estimates are correct so
14 that we can try to get this to more accurately
15 reflect what we're doing.

16 So at this point, I think it's a good idea
17 if the parties introduce yourself or appear, let us
18 know who's here, let us know who's here on the bridge
19 line, so we can know that going forward. Start with
20 the Complainant.

21 MR. KOPTA: Thank you, Your Honor. Gregory
22 J. Kopta, of the law firm Davis, Wright, Tremaine,
23 LLP, on behalf of AT&T Communications of the Pacific
24 Northwest, Inc.

25 JUDGE SCHAER: And then, do we have anyone

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1 from WorldCom with us on the bridge this morning?

2 And then, from the company?

3 MS. ENDEJAN: Judy Endejan, from Graham and
4 Dunn, appearing for Verizon Northwest, Inc. I would
5 like to advise the Commission, and we filed a formal
6 notice of this, but we moved our law firm last
7 weekend, so we have a new address, and I would like
8 to state that for the record, please. It is Pier 70,
9 2801 Alaskan Way, Suite 300, Seattle, Washington,
10 98121-1128. All other contact information I've
11 previously entered has remained the same.

12 JUDGE SCHAER: Thank you.

13 MS. ENDEJAN: Thank you.

14 JUDGE SCHAER: And then, for Commission
15 Staff, please.

16 MS. JOHNSTON: Sally G. Johnston, Assistant
17 Attorney General, appearing on behalf of Commission
18 Staff. And I'm covering this hearing for Ms. Smith,
19 who has previously entered an appearance in this
20 matter.

21 JUDGE SCHAER: Thank you. And then, for
22 Public Counsel, please.

23 MR. CROMWELL: Robert Cromwell, on behalf
24 of Public Counsel.

25 JUDGE SCHAER: Mr. Cromwell, I'd like to

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1 start with you, and I apologize if I missed a letter
2 that withdrew these times, but right now I have
3 estimates from you of ten minutes for Mr. Blackmon,
4 ten minutes for Mr. Fulp, ten minutes for Mr. Tucek,
5 ten minutes for Mr. Danner, and ten minutes for Mr.
6 Dye. Are those still your time estimates?

7 MR. CROMWELL: No, they're not. I
8 apologize, Your Honor. I sent an e-mail and I must
9 not have been careful enough to see that you were not
10 on it. I would not estimate that I would have any
11 cross-examination for any witnesses at this set of
12 hearings.

13 JUDGE SCHAER: Okay. So I'm going to just
14 eliminate those estimates at this point. Thank you.

15 MR. CROMWELL: You're welcome.

16 JUDGE SCHAER: Then, let's just start at
17 the left and go right. Are those your correct
18 estimates, Ms. Endejan? I tried to take them
19 carefully from your letter, but --

20 MS. ENDEJAN: Correct. Your Honor, in
21 working on preparing for cross-examination, I will do
22 my absolute best to try to stay within 60 minutes,
23 but it might be -- I might need an additional 15
24 minutes. So I don't know. It's probably wise to
25 make it 75 minutes at this point.

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1 JUDGE SCHAER: Now, I'm looking at --

2 MS. ENDEJAN: For Ms. Erdahl.

3 JUDGE SCHAER: Oh, for Ms. Erdahl.

4 MS. ENDEJAN: For Ms. Erdahl.

5 JUDGE SCHAER: Okay. And then, for AT&T?

6 MR. KOPTA: Yes, you've accurately
7 reflected the estimates that we've provided for
8 cross.

9 JUDGE SCHAER: And again, let me check to
10 see if anyone from WorldCom has joined us? And then,
11 are these correct estimates for Commission Staff?

12 MS. JOHNSTON: Yes, they are.

13 JUDGE SCHAER: Okay. The next item I'd
14 like to look at here is order of witnesses. And I
15 think I've gotten two different requests from
16 Verizon, and I'm willing to go either way. I just
17 need to know which one you want. So do you want Ms.
18 Heuring after Ms. Erdahl, or do you want Mr. Fulp to
19 go first, followed by Ms. Heuring?

20 MS. ENDEJAN: The crux of the problem that
21 we have in terms of scheduling witnesses is Ms.
22 Heuring can only be here on Thursday, May 8th. She
23 -- for a variety of reasons. And she very much would
24 like to be present during the examination of Ms.
25 Erdahl. So in this best of all possible worlds, what

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1 we would like is to have Mr. Fulp go first, followed
2 by Ms. Heuring, but if that doesn't work out
3 time-wise and it looks like we're running out of time
4 on Thursday, then we would like to put Ms. Heuring on
5 so that we can get her in on Thursday. Does that
6 make any sense?

7 JUDGE SCHAER: Okay. Makes perfect sense.
8 So why don't you let me know, when we're closer to
9 the time, which way you'd like to proceed.

10 MS. ENDEJAN: Thank you, Your Honor. I
11 appreciate that.

12 JUDGE SCHAER: Looking at the order of
13 witnesses for the other parties, are these the order
14 of witness you wish to follow?

15 MR. KOPTA: Since we only have one, then I
16 think you've got it right. We'll be first.

17 JUDGE SCHAER: Thank you. Are you going to
18 want to have any rebuttal or are you going to want to
19 put your witness on just once?

20 MR. KOPTA: At this point, we anticipate
21 just putting him on once, subject to whatever happens
22 at the hearings and whatever happens today in terms
23 of providing -- getting access to information that
24 we've requested, but that's the anticipation.

25 JUDGE SCHAER: Okay. And then, for

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1 Commission Staff?

2 MS. JOHNSTON: We're satisfied with the
3 order, Your Honor.

4 JUDGE SCHAER: All right.

5 MS. ENDEJAN: Your Honor, I would also
6 point out, if I advised you, again, inconsistently,
7 please forgive my schizophrenia, but we would like
8 Dr. Danner to go last, not Mr. Dye.

9 JUDGE SCHAER: Okay. I think I wrote that
10 down off of someone's list. It may have been off of
11 Staff's list. I'm not certain. So I will reverse
12 those, assuming that's okay with Staff.

13 MS. JOHNSTON: Yes, I assume that's fine,
14 Your Honor.

15 JUDGE SCHAER: All right. And again, I've
16 spoken to Ms. Endejan earlier in the proceeding. I
17 think she did follow up with this with the other
18 parties. If there's a need to accommodate witness
19 timing, if you've got someone here who needs to catch
20 a plane or doesn't want to stay for another day or
21 can only be here one day, I strongly encourage you to
22 work together to informally solve that, and if you
23 need to ask the Bench, we will take care of it, but
24 we do like to accommodate our witnesses as well as we
25 can.

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1 So Item Two. Actually, Item One seems to
2 be done and we're on to Item Two.

3 MS. SINGER NELSON: Excuse me, Judge. I
4 apologize.

5 JUDGE SCHAER: Oh, you're here.

6 MS. SINGER NELSON: Yes. I thought that
7 the prehearing started at 9:30. I'm sorry for being
8 late.

9 JUDGE SCHAER: I did, too, till I got here
10 this morning.

11 MS. SINGER NELSON: Okay. It wasn't just
12 me.

13 JUDGE SCHAER: I had it on my calendar for
14 9:00, but I thought that was so I'd just be certain
15 I'd have a half an hour to get ready.

16 MS. SINGER NELSON: Well, I'd like to make
17 my appearance. Michel Singer Nelson. I'm here on
18 behalf of MCI/WorldCom. And I do apologize for being
19 late.

20 JUDGE SCHAER: Thank you for joining us.
21 I've got a couple of items that it looks like Ms.
22 Gage is sharing with you. We've just gone through
23 order of witnesses and estimates of cross. We've got
24 an exhibit list that is pretty much Mr. Damron's best
25 effort to get everything organized and on one piece

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1 of paper that I'm going to want to work through. It
2 might be a little tedious at a few points, but I
3 think, in the end, it will be a very useful document
4 to have next week.

5 So Ms. Singer Nelson, the first item that
6 we took up on our agenda this morning -- did you get
7 a copy of the agenda?

8 MS. SINGER NELSON: Yes.

9 JUDGE SCHAER: Okay. Was the order of
10 witnesses and the time estimates for cross. And I
11 would like to know if the time estimates shown here
12 remain the time estimates for WorldCom?

13 MS. SINGER NELSON: The time estimates that
14 I originally made are the same time estimates, but I
15 don't have a sheet that shows what all of the
16 estimates are in front of me. Oh, can I get one of
17 those?

18 JUDGE SCHAER: I'm sorry, I thought you'd
19 been handed one. Let's go off the record for a
20 moment.

21 (Discussion off the record.)

22 JUDGE SCHAER: Okay. Let's go back on the
23 record at this point and go forward with our agenda.
24 In front of you should be a copy of an exhibit list,
25 and what I'm going to ask the parties to do is to

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1 just move down the pages of this as quickly as they
2 can. I would like you to check your own witnesses
3 and I would like people who are asking someone else
4 questions to check that witness and see if things
5 that you think you had stricken have been identified
6 as stricken, see if the things you think are still in
7 there are still in there.

8 And there are certain questions that have
9 come up since this that we'll deal with in just a few
10 minutes, after you have looked this over. Let's go
11 off the record for a moment.

12 (Discussion off the record.)

13 JUDGE SCHAER: Back on the record. While
14 we were off the record, we had an extensive
15 discussion of items that should be stricken that were
16 previously identified as exhibits, and also of items
17 that should be added as new exhibits and of
18 corrections that should be made to exhibits.

19 We're going to take our morning recess,
20 come back at 25 till 11:00, and at that time we're
21 going to go through and identify on the record both
22 the portions of exhibits excluded and identification
23 of exhibits not yet identified, working from the work
24 we've done now and hopefully moving quickly and so
25 that we will have every exhibit identified in the

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1 record before next week's hearing.

2 Is there anything anyone wants to say
3 before we go off the record? Anything you'd like to
4 add to the description of the informal discussions?
5 Okay. Thank you all. Let's be off the record.

6 (Recess taken.)

7 JUDGE SCHAER: Back on the record after our
8 morning recess. Would you go ahead and briefly
9 restate your concern, Ms. Johnston? I believe your
10 concern was that there may be exhibits identified
11 that you will not want to have admitted later on
12 because they refer to testimony that's been stricken;
13 is that correct?

14 MS. JOHNSTON: That's correct.

15 JUDGE SCHAER: Okay. We have talked
16 earlier today in a different setting about parties
17 looking at responses to data requests that they might
18 offer and looking to see if they can talk to the
19 other parties involved and see how many of those they
20 can just stipulate and put in.

21 We are used, in these proceedings, to
22 having people put in more cross exhibits than they
23 ever offer, so I would expect many of the cross
24 exhibits that are on this list may never be offered a
25 part of the record. And of course, the ones that you

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1 have particularly identified will need to be either
2 not offered or discussed if they are, and I would
3 again encourage the parties to resolve most of that,
4 if you can.

5 MS. JOHNSTON: Okay. May I just identify
6 for the record the exhibits or the proposed exhibits
7 that we've identified as exhibits to which we would
8 object? Exhibit Number 139, 140, 142 and 143. And
9 in any event, this will serve as a heads up to Ms.
10 Endejan that Commission Staff would object to these
11 exhibits in the event they were offered, because they
12 do pertain to stricken testimony.

13 JUDGE SCHAER: Thank you.

14 MS. JOHNSTON: Thank you.

15 JUDGE SCHAER: And then, what I would like
16 to do at this point, while we're going through this,
17 every exhibit that was on this list as we came in the
18 door today had been identified, but for the new cross
19 exhibits that were provided by the parties or the
20 revised exhibits that were put in because they were
21 -- there were so many holes in the original that
22 there was a second version put in that showed all the
23 changes.

24 My goal today is just to get everything
25 here identified quickly, if we can, so that when we

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1 go to deal with it, we don't have to go through those
2 particular processes. And if anyone has concerns
3 about that, let's talk about it, but otherwise I'd
4 like to spend a very short time, if we could, and
5 just identify what's here without any implication
6 that it will be admitted at some point. Okay?

7 MS. JOHNSTON: Thank you.

8 JUDGE SCHAER: Anything else before we get
9 started? Okay. Exhibits T-3 and T-4C have
10 previously been identified, but AT&T Counsel informed
11 us off the record that there will be portions of that
12 that AT&T seeks to strike based on the Fifth
13 Supplemental Order.

14 We have been provided and I am going to
15 mark for identification as Exhibit 93 a memorandum by
16 the Public Utility Commission of Texas regarding an
17 evaluation of the FCC joint audit of GTE.

18 We have been notified that what's been
19 identified for the record as Exhibit 151-C actually
20 is two different pages, one of which is Number
21 BAE-1C, and the second of which is page BAE-5C. Were
22 there any changes to those pages or any updates, Ms.
23 Johnston?

24 MS. JOHNSTON: No.

25 JUDGE SCHAER: Thank you. At this point,

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1 we have additional cross exhibits?

2 MS. JOHNSTON: Oh, excuse me, Your Honor,
3 I just want to clarify. I may have missed something.
4 Do you mean any updates or revisions subsequent to
5 the ones I distributed in advance of this hearing?

6 JUDGE SCHAER: I mean to these two, Exhibit
7 151-C?

8 MS. JOHNSTON: Yes, this morning we filed
9 and distributed substitute pages reflecting more
10 current data.

11 JUDGE SCHAER: Okay. Then I want to
12 indicate in the identification, thank you, that -- I
13 had missed that from these notes and that these also
14 are updated pages that have been identified for this
15 exhibit.

16 MS. JOHNSTON: Yes, thank you.

17 JUDGE SCHAER: Thank you. We have had
18 distributed and I'm going to mark for identification
19 the following as Exhibit 168, the Verizon Northwest,
20 Inc. quarterly financials as being suggested as an
21 additional cross exhibit. As Exhibit 169 for
22 identification, a document entitled Verizon
23 Northwest, Inc. Results of Operations Summary, which
24 is put forward as a cross exhibit. And as exhibit
25 for identification 171 --

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1 MS. ENDEJAN: One-seventy.

2 JUDGE SCHAER: One-seven-zero, okay, a
3 Verizon Northwest, Inc. revenue requirement document.
4 The testimony previously identified in T-200, which
5 was the prefiled testimony of Mr. Orville D. Fulp,
6 have had a number of revisions made to it, or
7 portions stricken would be more accurate, and so if
8 you would -- the document identified as T-200 remains
9 identified, but a new exhibit entitled document
10 T-200-R has been provided, and I will identify it as
11 the direct testimony of Mr. Fulp, revised August
12 28th, 2003. And in the exhibit list, it notes the
13 portions of exhibit for identification T-200, which
14 have been stricken or withdrawn.

15 MS. ENDEJAN: Your Honor, I believe you
16 meant to say April 28th. You said August.

17 JUDGE SCHAER: I'm sorry. August 28th is
18 my sister's anniversary. Certain numbers do
19 different things. Thank you very much, Ms. Endejan.

20 Okay. Exhibits that were previously marked
21 for identification as 201-C and 202-C have been
22 stricken. The document previously filed as Exhibit
23 218 will be refiled, although the attachments are
24 here.

25 MS. ENDEJAN: Your Honor, over the break,

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1 we contacted knowledgeable Verizon staff and learned
2 that there were no further deletions that needed to
3 be made to that exhibit, so consequently, there is no
4 need to reoffer anything or provide additional copies
5 to Mr. Kopta. So as it stands now, the way he's
6 marked it, it can be, I guess, marked for entry into
7 the record.

8 JUDGE SCHAER: Okay. Then marked for
9 identification today as new cross exhibits were a
10 document I will number for identification as 217,
11 which is the Verizon response to AT&T Data Request
12 34. The next document will be entitled 218-C, and it
13 is Verizon's response to AT&T Data Request 70. The
14 next --

15 MS. JOHNSTON: Excuse me, Your Honor. Why
16 do I have this down as 218-A-C?

17 JUDGE SCHAER: Well, for a bit, I think we
18 thought that part of it was confidential and part of
19 it wasn't. And my current understanding is that it's
20 all confidential; is that correct?

21 MS. ENDEJAN: No, let me clarify it. As it
22 has been marked by Mr. Kopta, there is -- the pink
23 sheet still has one confidential number on it. And
24 so 218-A should reflect the response without the
25 confidential information, and 218-C should reflect

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1 the response with the confidential information.

2 JUDGE SCHAER: Thank you, Ms. Endejan. So
3 I will mark for identification as Exhibit 218-A the
4 nonconfidential portions of the document entitled
5 Verizon Response to AT&T Data Request 70, and I will
6 mark for identification as Exhibit 218 -- is it A-C?
7 -- A-C, the portions of the Verizon response to AT&T
8 Data Request 70 that are confidential. Now, did I
9 get that right?

10 MS. JOHNSTON: That sounds right.

11 JUDGE SCHAER: Okay. Let's keep moving,
12 then. Exhibit 219, we actually had no physical
13 manifestation of Exhibit 219 in the hearing room.
14 That number was reserved in an earlier hearing as a
15 placeholder for information that AT&T hoped to
16 receive. And did you wish to just keep -- hold that
17 number in case something was provided before the
18 hearing, Mr. Kopta?

19 MR. KOPTA: Yes, that would be our request.
20 And in addition, there are a couple of other exhibits
21 that Verizon informs me that they have provided some
22 updates to, and we'll just substitute those at the
23 time of the hearing. We would seek to retain the
24 same number. We would just swap out the updated data
25 request response.

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1 JUDGE SCHAER: Okay. If there's any other
2 party, other than you or Verizon, that might be
3 interested in that, then please try to distribute
4 that at least a few days ahead, so --

5 MR. KOPTA: Well, I'm assuming that Verizon
6 is sending out responses to all those who have
7 requested copies of responses, but we'll make sure
8 that --

9 JUDGE SCHAER: But you do realize that the
10 Bench does not receive data requests?

11 MR. KOPTA: Yes, yes.

12 JUDGE SCHAER: Thank you. And we do
13 receive copies of documents that are prefiled and
14 sometimes need to study them.

15 MR. KOPTA: We will turn them around and
16 provide them to the Commission.

17 JUDGE SCHAER: Thank you. We then have
18 some more exhibits that have been filed as new cross
19 exhibits, marked as -- I'm going to identify as
20 Exhibit 400 a document entitled Verizon Advice Number
21 3076, and has that been provided? I believe it has.

22 MR. KOPTA: Yes, it has.

23 JUDGE SCHAER: Okay. As exhibit for
24 identification 401, Verizon Long Distance Price List
25 filing in Docket Number UT-030532. As exhibit for

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1 identification 402, the Verizon Long Distance Price
2 List filing in Docket Number UT-030535.

3 Looking next at Exhibit T-220 through
4 T-223-C, these documents, which we've marked for
5 identification, were stricken by the Commission's
6 Fifth Supplemental Order, but the Seventh
7 Supplemental Order recognizes a representation by
8 counsel that they have agreed on having these
9 documents entered into the record and that they will
10 support reoffer of those exhibits. Is that
11 everyone's understanding?

12 MS. ENDEJAN: Yes, Your Honor.

13 JUDGE SCHAER: So they're already marked
14 for identification. I think I'll just leave them
15 marked with the numbers they have, and I will note
16 that those orders indicate that they may be admitted
17 for a limited purpose of supporting access charge
18 costs, rather than revenue requirement.

19 MS. JOHNSTON: Well, it's my understanding,
20 also, Your Honor, that Ms. Endejan intends to offer
21 them as part of -- or as an offer of proof.

22 MS. ENDEJAN: Not exactly. I think you're
23 confusing the surrebuttal with the direct, and the
24 direct, which is T-220, 221, 222, 223-C, will be
25 offered for the purpose that ALJ Schaer just said,

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1 for establishing access charge costs. So we won't be
2 making an offer of proof; we'll be actually offering
3 them into evidence, and it was my understanding that
4 parties did not object to us doing so for that
5 purpose.

6 MS. JOHNSTON: I can't speak for Ms. Smith.
7 She's in Paris.

8 JUDGE SCHAER: Well, I think you ought to
9 say something that will cause trouble. No, I'm
10 sorry. I didn't say that. I will indicate, Ms.
11 Johnston, that the Commission has recognized in one
12 of its orders that the parties have indicated to it
13 that they had reached an agreement on this and
14 thought these should be put in the record for that
15 limited purpose.

16 MS. JOHNSTON: Thank you. And that's set
17 forth in the Seventh Supplemental Order?

18 JUDGE SCHAER: I believe the notes are
19 here. It was in the Fifth, and then we came back in
20 the Seventh.

21 MS. JOHNSTON: Thank you.

22 JUDGE SCHAER: So I believe Ms. Smith is on
23 the record on this.

24 MS. JOHNSTON: Thank you.

25 JUDGE SCHAER: You're welcome. Okay. Then

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1 we have exhibits that have been marked for
2 identification as T-224 and T-225C, that I believe
3 have been stricken at this point.

4 We have Exhibit 226-C. That is identified
5 at this point as WUTC Number 45, and after some
6 questioning of whether it should still be considered
7 at this point, it was determined that that, at this
8 point, has been identified as a Staff cross exhibit
9 and it will remain as an identified exhibit in this
10 record.

11 Moving to Exhibit T-230, portions of the
12 testimony were stricken, and this happened with Mr.
13 Fulp's testimony. There is now accompanying this a
14 document I'll mark for identification as T-230R,
15 which is Terry R. Dye's direct testimony revised to
16 show the portions of testimony that were stricken in
17 the Commission orders.

18 Exhibits T-233, T-234C, and T-234C-R are
19 all surrebuttal testimony of Mr. Dye. And T-234C-R
20 is a number that I'm going to use to identify a
21 document identified as surrebuttal testimony,
22 TRD-4TC-R, Confidential, and we'll note that portions
23 of this testimony were stricken, as indicated in the
24 Commission's Seventh Supplemental Order, paragraph
25 50.

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1 If I have not done so clearly enough, I
2 will indicate that portions of T-233 for
3 identification and T-234C for identification have
4 been stricken, and that this is described in exhibit
5 -- in the exhibit that's been marked for
6 identification as T-234C-R.

7 At this point, I believe we are looking at
8 what's been marked for identification as T-242, which
9 is the direct testimony of Nancy Heuring, and I note
10 that portions of this testimony have been withdrawn,
11 revised, or corrected.

12 I'm going to mark for identification as
13 T-242R revised direct testimony that was filed with
14 the Commission on April 28th, '03, and which had
15 portions of testimony withdrawn or corrected, as
16 indicated on the exhibit list that was distributed
17 this morning. Those are also identified in the
18 exhibit -- in the proposed exhibit.

19 The party offering this testimony, Verizon,
20 has indicated that the corrected testimony is
21 underlined in this exhibit and it can be found on
22 pages 11 and 14.

23 Moving down to what's been marked as
24 Exhibit 247-C for identification, this, again, was a
25 placeholder for confidential exhibits. None have

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1 been provided to this point, and so did the parties
2 want to continue to keep this placeholder or should
3 we just eliminate that number?

4 MR. KOPTA: Our preference would be to
5 simply eliminate it.

6 MS. ENDEJAN: We don't have any problem
7 with that.

8 JUDGE SCHAER: Okay. What's been marked
9 for identification -- or not marked for
10 identification, but -- sorry, what's been marked for
11 identification earlier as Exhibits NWH-6 through
12 NWH-9, and identified as Exhibit 248, are documents
13 that have been stricken, so all three of those
14 documents should be stricken.

15 MS. SINGER NELSON: NWH-6 through 8 are the
16 three documents?

17 MS. JOHNSTON: Nine.

18 JUDGE SCHAER: So that's four documents.

19 MS. SINGER NELSON: Four documents. Thank
20 you.

21 JUDGE SCHAER: Thank you. Page 15 of 16,
22 we have two documents that have been stricken,
23 testimony marked for identification as T-252 of
24 Dennis B. Trimble has been stricken, and testimony
25 marked for identification as T-255 of Duane K.

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1 Simmons has been stricken. Those are both discussed
2 in the Commission's Seventh Supplemental Order at
3 paragraph 50.

4 Looking, then, at exhibit for
5 identification T-260, we have what had been prefiled
6 and identified as the direct testimony of Carl R.
7 Danner, and portions of that testimony has been
8 stricken. We now have filed Exhibit T-260-R, which
9 is the direct testimony noting the changes, and was
10 revised on April 28th, '03, with the portions of
11 testimony stricken, as indicated in the revised
12 exhibit.

13 Okay. Marked for identification currently
14 as Exhibit T-262, which is surrebuttal testimony of
15 Mr. Danner, portions of this testimony have also been
16 stricken and those changes are reflected in a
17 document I'm going to mark for identification at this
18 point as T-262-R, and I will note that certain
19 portions are stricken in accordance with the
20 Commission's Seventh Supplemental Order.

21 Looking at what's been -- the numbers that
22 have been reserved as 263-C and 264, for confidential
23 and nonconfidential exhibits, no exhibits have been
24 provided for those, and those numbers are going to be
25 stricken at this point.

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1 Exhibit 265 and 266, these are
2 cross-examination exhibits that were provided today.
3 The first is a document entitled at the top Credit
4 Suisse First Boston Equity Research Report, AT&T
5 Consumer, and has a date of February 5th, 2003.
6 Marked for identification as Exhibit 266 is a
7 document entitled Friedman Billings Ramsey Technology
8 Industry Update, dated January 14th, 2003.

9 And so I believe that marks for
10 identification all of the exhibits previously before
11 the Commission. Are there questions or concerns, Ms.
12 Johnston?

13 MS. JOHNSTON: Yes, thank you. I have just
14 been advised by Staff that Exhibit 235-C was stricken
15 by the Commission. That's page 13 of 16 of the
16 exhibit list. My understanding is it was a prefiled
17 exhibit.

18 JUDGE SCHAER: And do you have a reference
19 to an order or paragraph number of an order or how --
20 is that part of the Seventh Supplemental Order?

21 MS. JOHNSTON: Yes.

22 JUDGE SCHAER: Perhaps Staff could provide
23 you with that reference for the paragraph number and
24 the order number so we could look at it.

25 MS. JOHNSTON: Okay, thank you. Your

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1 Honor, I'd invite your attention to Paragraph 53 of
2 the Seventh Supplemental Order. There the Commission
3 was explicit in striking the vast majority of Mr.
4 Dye's testimony, with the exception of the portions
5 set forth in the bullet area.

6 JUDGE SCHAER: Ms. Endejan.

7 MS. ENDEJAN: Your Honor, I don't have any
8 reason to, you know, question that. I just want --
9 I'd like to take an opportunity to look at that when
10 I get back to my office, because I didn't bring all
11 the testimony with me. And you know, if it relates
12 to stricken testimony, then it's stricken. It's
13 simple as that.

14 MS. JOHNSTON: Commission Staff is
15 satisfied with that. I just want to make it clear
16 that it's our belief that the exhibit has been
17 stricken as an exhibit to the surrebuttal testimony
18 of Mr. Dye.

19 JUDGE SCHAER: Okay. Then I would
20 appreciate it if you could communicate and let the
21 Bench and the parties know if you've been able to
22 reach a resolution on that.

23 MS. JOHNSTON: Thank you.

24 JUDGE SCHAER: So we've decided that Ms.
25 Endejan will research this point and consult with Ms.

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1 Johnston, and the two will be in further contact with
2 the other parties and the Bench, hopefully reporting
3 on an agreement at this point.

4 MS. JOHNSTON: Thank you.

5 JUDGE SCHAER: Thank you. Mr. Damron is
6 reminding me that while we were off the record, Staff
7 had expressed somewhat similar concerns about
8 Exhibits 139, 140, 142 and 143, indicating its belief
9 that they may have related to items that were
10 stricken, and I'm just going to suggest that if you
11 can include that in your conversation, that might be
12 beneficial to everyone.

13 MS. JOHNSTON: We will, thank you.

14 JUDGE SCHAER: Thank you. We're done. It
15 appears to the Bench that we have now identified the
16 documents that we wanted to work through and identify
17 today. Are there any questions or concerns at this
18 point or disagreements that that mission has been
19 accomplished? Good.

20 So I believe that we are now to Item Five
21 on the agenda. And I need to tell you that, after
22 trying to track through in my mind what is relevant
23 and what is not and what is related to what is
24 relevant and what is not on different kinds of cost
25 figures and other figures, that I tried to study

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1 through this and got lost the other day.

2 I'm really hoping that you can treat me
3 like a sixth grader and just walk me through what
4 your position is and then walk me through what your
5 response is, and I'll try to rule on the Bench so
6 that we can move forward from here. Mr. Kopta.

7 MR. KOPTA: I will do that. Thank you,
8 Your Honor. In Data Request Number 34, AT&T asked
9 Verizon rates, terms and conditions under which its
10 affiliates provide intrastate toll services. That
11 data request also asked Verizon for any services that
12 Verizon provides to its affiliates in their provision
13 of total services, as well as any services that
14 Verizon also obtains from a common source as its
15 affiliates in the provision of intrastate toll
16 services.

17 Verizon objected to that data request on
18 the grounds that this was information that was in the
19 custody and control of its affiliates, to which
20 Verizon did not have access. Verizon represented to
21 the Commission the same position at the motion to
22 compel hearing on December 19th. At that point,
23 accepting that representation, AT&T did not pursue
24 that particular data request any further.

25 In surrebuttal testimony that Verizon filed

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1 on behalf of Mr. Fulp a couple of months later came
2 the revelation that Verizon Northwest provides the
3 resold intrastate or intraLATA intrastate toll
4 services to Verizon Long Distance, and also that
5 Verizon provides joint marketing services to Verizon
6 Long Distance.

7 Following up on that testimony, AT&T
8 propounded Data Requests Number 70 and 71, which had
9 asked for specific information about the rates, terms
10 and conditions under which Verizon provided or
11 provides those services to its affiliate.

12 That response was stayed, along with all of
13 the other litigation matters, after the parties had
14 reached what they had thought was a settlement and,
15 in our view, would remain stayed until approximately
16 April 3rd, when -- or April 4th, actually, when
17 comments were filed indicating that the settlement
18 agreement was no longer to be relied on and that we
19 would proceed to hearing.

20 At that point, our outstanding responses to
21 data requests once again became due. Verizon did not
22 provide responses. I contacted Counsel and asked for
23 a status report, which Counsel for Verizon said that
24 she would provide. A week later, I sent another
25 e-mail asking again for the status and received no

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1 response. Two days later, I indicated that the time
2 was drawing near, by which we would need to file a
3 motion if we needed to, and I needed to have a
4 response, at which point the response was that
5 Verizon would not provide any responses to Data
6 Requests Number 70 and 71.

7 We then -- my response was that we would
8 then limit our motion to compel with those data
9 request responses, since Verizon represented that it
10 would provide some supplemental information that it
11 had represented that it would provide, and we then
12 filed our motion to compel.

13 Included in our motion to compel are all
14 three of those data requests, Data Request Number 34,
15 Number 70 and 71. Our concern is twofold. Number
16 one, we requested this data over six months ago, and
17 Verizon, when we moved to compel it, indicated that
18 it didn't have the data. In our view, that
19 representation was false, because Verizon, as the
20 party providing the resold toll services, had that
21 information and should have provided it. Instead, it
22 represented that it didn't have that information,
23 both with respect to the intrastate toll services
24 that it resells to its affiliate and with respect to
25 the joint marketing that it provides to its

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1 affiliate.

2 Rather than make an issue of Verizon's
3 misrepresentations, AT&T simply followed up on the
4 surrebuttal testimony in asking for specific
5 information about the intrastate toll service that
6 Verizon provides to its affiliate and the joint
7 marketing that Verizon provides to its affiliate, and
8 Verizon again refused to provide that.

9 After we filed our motion to compel,
10 Verizon filed a partial response to Data Request
11 Number 70, and I am informed this morning by Counsel
12 that Verizon has sent, by electronic mail, a response
13 to Data Request Number 71, which I have -- I have not
14 reviewed to see whether it is responsive and to what
15 extent.

16 But the fact remains that we were entitled
17 to this information several months ago. We wanted
18 this information so that Dr. Selwyn could evaluate it
19 in preparing his rebuttal testimony, and we didn't
20 get it before Dr. Selwyn provided his rebuttal
21 testimony. We didn't get it until just now, and even
22 then, it's not complete.

23 Specifically, with respect to Data Request
24 Number 70, Verizon has stated the amount that it has
25 billed its affiliate for joint marketing services in

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1 the year 2002, and provided the contract, but has
2 not, as requested, provided any invoices or
3 accounting or other means by which AT&T can determine
4 how the number that allegedly Verizon received from
5 its affiliate was derived from the general rates that
6 happen to be in their contract.

7 So again, they've not provided complete
8 information with respect to Data Request Number 70.
9 And I don't know what they've provided in response to
10 Data Request Number 71.

11 All of this information, Your Honor, as
12 previously determined in the hearing on the 19th, was
13 relevant to the issues here in this docket, and has
14 also required Verizon to provide, to the extent that
15 Verizon has it. We shouldn't have had to file a
16 second motion to compel. We should have had this
17 information in early January, but we haven't.

18 And so we are asking for an order from this
19 Commission compelling Verizon to provide full and
20 complete responses to Data Requests Number 34, 70,
21 and 71, as well as recommending that the Commission
22 sanction Verizon for its misrepresentations to this
23 Commission.

24 JUDGE SCHAER: Which part of Mr. Fulp's
25 surrebuttal is this contained in?

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1 MR. KOPTA: Let's see. Data Request Number
2 70 specifically references Mr. Fulp's surrebuttal
3 testimony at page five, lines one, footnote one, and
4 15 through 16.

5 JUDGE SCHAER: Okay.

6 MR. KOPTA: And the second -- and Data
7 Request Number 71 is his testimony at page six, lines
8 one through five.

9 JUDGE SCHAER: And are those portions of
10 his testimony portions that the Commission has
11 indicated it will strike?

12 MR. KOPTA: Yes, they are.

13 JUDGE SCHAER: Okay.

14 MR. KOPTA: And that was the basis on which
15 Verizon stated that it wouldn't provide a response.
16 However, the information disclosed is nevertheless
17 relevant and, in fact, is information that we had
18 previously requested. So the fact that it is in
19 stricken testimony is irrelevant because it
20 represents a disclosure that Verizon, in fact, has
21 information that's responsive to Data Request Number
22 34 when it represented to the Commission and to AT&T
23 that it did not.

24 JUDGE SCHAER: Okay. What use now could
25 AT&T make of this information, just in general terms?

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1 MR. KOPTA: Well, at this point, the best
2 use would be able to have it available for
3 cross-examination for Mr. Fulp. I mean, optimally,
4 we would have had this information in enough time for
5 Dr. Selwyn to have evaluated it and to have provided
6 some evidence on it. We can't now and we certainly
7 are not asking to delay these proceedings to enable
8 him to do so, but we can use it, to the extent that
9 we possibly can, in cross-examination of Mr. Fulp.

10 JUDGE SCHAER: Are there portions of Mr.
11 Fulp's testimony that remain -- that you could ask
12 relevant questions about based on this information?

13 MR. KOPTA: I'm not aware of him having
14 addressed specifically this issue. However, it is an
15 issue. We raised the issue of what we think are
16 discriminatory treatment that Verizon has between its
17 affiliates and nonaffiliated companies. And the fact
18 that Verizon didn't address that particular issue in
19 its testimony I don't think should preclude us from
20 asking whatever witness happens to be available those
21 types of questions, unless the Commission wants to
22 right now give a summary determination on that issue
23 that, in fact, because there is no evidence to the
24 contrary, that, in fact, Verizon is providing
25 preferential treatment to its affiliates.

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1 JUDGE SCHAER: Are there other witnesses
2 that you might want to ask questions -- other Verizon
3 witnesses that you might want to ask questions of
4 based on this information, to the extent that you
5 know?

6 MR. KOPTA: I don't know. Yeah, at this
7 point, just based on looking at what they've
8 provided, Mr. Fulp seems to be the only one that
9 might have any information about this. Not only
10 because he previously stated some information in his
11 surrebuttal testimony that's now no longer going to
12 be part of the record, but also because Mr. Dye seems
13 to be specific to imputation, Ms. Heuring talks about
14 revenue, Mr. Tucek talks about cost studies, and Dr.
15 Danner talks about economics, and none of those other
16 witnesses would seem to have any personal knowledge
17 about the relationship between Verizon and its
18 affiliates, so Mr. Fulp seems to be the only witness
19 that could possibly shed any light on this.

20 JUDGE SCHAER: And what would you think
21 would be appropriate sanctions if the Commission were
22 to rule in your favor?

23 MR. KOPTA: We recommended that the
24 Commission look to the appropriate statute, which
25 provides for maximum of a thousand dollars per day

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1 for a continuing violation, and we think it would be
2 appropriate to impose the maximum penalty on a
3 per-day basis until -- from December 19th, when
4 Verizon made its misrepresentations to the
5 Commission, until the date on which it corrects that.

6 JUDGE SCHAER: Okay. Did you have anything
7 else you wanted to say in your initial presentation?

8 MR. KOPTA: No, thank you.

9 JUDGE SCHAER: Ms. Endejan, would you
10 prefer to go next or would you prefer to see if any
11 of the other parties want to say something and be
12 able to respond to all of them? How would you like
13 to proceed?

14 MS. ENDEJAN: Well, Your Honor, I think
15 that, frankly, this is a dispute between AT&T and
16 Verizon, and I would question why any of the other
17 parties have any entitlement to stake a position on
18 this, first of all. And you know, I'm more than
19 happy -- I have a lot to say, and I can wait till the
20 end, but I mean, I don't know why Staff or WorldCom
21 has any basis for making any -- for participating in
22 this motion. It's between us two.

23 MR. CROMWELL: This is Robert Cromwell. If
24 I might take this opportunity just to take my leave,
25 I have another commitment that I need to attend. And

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1 I just want to let you know I'm cutting off of the
2 bridge line.

3 JUDGE SCHAER: Thank you for letting us
4 know, Mr. Cromwell.

5 MR. CROMWELL: Have a good afternoon.

6 JUDGE SCHAER: You too. Well, let me check
7 on that, because I have not checked with you before I
8 asked the other parties. Do either of the other
9 parties wish to participate in this discussion in any
10 way?

11 MS. JOHNSTON: Sally Johnston, on behalf of
12 Commission Staff. Actually, Staff takes no position
13 on AT&T's second motion to compel, but I don't think
14 Staff's lack of -- lack of position has anything to
15 do with entitlement.

16 JUDGE SCHAER: Okay. Ms. Singer Nelson.

17 MS. SINGER NELSON: And Worldcom doesn't
18 have anything to add to the discussion.

19 JUDGE SCHAER: All right. Go ahead, Ms.
20 Endejan.

21 MS. ENDEJAN: Your Honor, I'm extremely
22 troubled by this motion and very saddened by what
23 AT&T has done here, because -- and I don't know if
24 you've had an opportunity to go back and review the
25 December 19th, 2002 transcript that you presided

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1 over, but there were no misrepresentations made by
2 Verizon with respect to any particular information
3 regarding -- I'm trying to phrase Mr. Kopta's exact
4 words -- regarding whether Verizon Northwest provides
5 intraLATA toll on a resold basis to Verizon Long
6 Distance.

7 What, in fact, the record discloses is that
8 there was a problem with the phrasing of DR Number
9 34, and this was pointed out in a lengthy
10 off-the-record discussion with Mr. Kopta. And I
11 guess I've learned my lesson in this instance,
12 because I will never again have an off-the-record
13 discussion resolving discovery disputes if I have to
14 deal with motions to compel such as this.

15 During that off-the-record discussion, we
16 talked through the issues associated with all of the
17 outstanding data requests, and I agreed and
18 represented to Your Honor that I would go back and
19 inquire about what sort of information I could get
20 from not within Verizon Northwest, located in
21 Everett, Washington, but through Verizon's regulatory
22 operations in Texas.

23 And Mr. Kopta agreed that he would rephrase
24 DR Number 34, and that I would try to respond to it,
25 and that I would -- if he couldn't -- if I couldn't

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1 get the information about affiliates, he would then
2 subpoena it. In a contemporaneous memo that I wrote
3 that day outlining our activities, and I'd be happy
4 to go under oath to testify to this, I said, in
5 response to AT&T Data Request Number 34, this was the
6 most problematic data request and we agreed that Greg
7 would rephrase the question, which is directed at
8 finding out if Verizon Northwest shares any of the
9 functionalities listed; i.e., maintenance,
10 administrative, et cetera, with its affiliates. We
11 will provide the information from Verizon Northwest
12 that we have and Greg Kopta will subpoena the
13 information from the affiliates, if necessary.

14 I then said, No specific deadline was
15 established for Verizon's responses with respect to
16 AT&T Data Request Numbers 3 and 34. The ball is in
17 Greg Kopta's court.

18 With respect to all of the other data
19 requests that were the subject of AT&T's motion to
20 compel, we provided supplemental responses. We went
21 back, we found affiliate information. We never heard
22 a thing about DR Number 34. It was never rephrased.
23 Nothing. It appeared to have been dropped by AT&T.

24 Then we had the series of, you know,
25 settlement negotiations and then the settlement and

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1 then discovery got stayed and then it got unstayed
2 and then we were propounded with -- well, we had been
3 served, I think, with the data requests before the
4 settlement and didn't address them until after the
5 settlement came undone.

6 And so in dealing with the ones that Mr.
7 Kopta requested, we said we'd provide supplemental
8 responses, which we are today, to Numbers 63 and 66,
9 and with respect to 70 and 71, we were concerned,
10 because that related to Mr. Fulp's testimony that
11 appeared to have been stricken, and we were asking
12 the Commission to revisit that decision to see if it
13 would allow Mr. Fulp's surrebuttal testimony.
14 Because, for the reasons I think Ms. Johnston put
15 forth today, why should we have data requests in the
16 record that deal with issues and deal with stricken
17 testimony?

18 So when we received the Commission's order
19 confirming that Mr. Fulp's surrebuttal testimony was
20 stricken, we objected to responding to AT&T's 70 and
21 71 on that basis. The relevancy to stricken
22 testimony to us seemed nonexistent.

23 At no time did Mr. Kopta ever advise
24 Counsel, me or anyone, that Numbers 70 and 71 were
25 supposed to be the substitute, replacement or

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1 rephrasing of DR Number 34. So I think it's
2 absolutely incorrect to find or would be legal error
3 to find that Verizon deliberately flouted some
4 Commission order or rule or discovery requirement for
5 failure to respond to a data request that AT&T had
6 agreed to rephrase.

7 So what we have here is, I think, a classic
8 lack of communication that is certainly not a
9 sanctionable sort of offense. A review of the
10 transcript in totality shows that when I was
11 responding to questions about what Verizon -- what
12 documents Verizon had within its custody and control,
13 I was responding on behalf of Verizon Northwest,
14 Inc., my client, headquartered in Everett.

15 At several points, I did offer to, and I
16 have since followed through on that, to inquire
17 further within Verizon Northwest and its service
18 corporation in Irving for the information, and I've
19 advised the client, if you can get the information,
20 you provide it, and we did. We provided supplemental
21 responses.

22 So what we had hanging was DR Number 34,
23 and now we're being hit in the face with a claim that
24 we deliberately failed to respond to a data request
25 that, if you look at it literally, it calls for us --

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1 A, B, C, I think E, there's no connection between
2 Verizon Northwest, Inc. They wanted us to provide
3 information simply on behalf of Verizon Long
4 Distance, Verizon Enterprise Solutions and Verizon
5 Select Services, Inc.

6 And I explained this to Mr. Kopta in
7 December in our off-the-record discussion. He said,
8 Okay, let me phrase it differently.

9 So here we are now, and we have not ever
10 received a response from Mr. Kopta, and we refused to
11 respond to data requests initially that related to
12 stricken testimony. And now we've offered and have
13 actually provided the responses. There's nothing to
14 compel here. This is the first day, as I'm sitting
15 here this morning, this is the first time that Mr.
16 Kopta's advised me that, Well, your response is
17 deficient because you didn't provide the invoices
18 underlying the total numbers.

19 I mean, we shouldn't have to be taking up
20 your time, Your Honor, on this sort of squabbling,
21 and I really apologize and I regret that this is
22 happening. But first and foremost, I want to set the
23 record straight that at no time did I misrepresent
24 what Verizon Northwest, Inc. had in its possession or
25 control, and that I did follow through on my

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1 commitment to look at and to get further information.

2 You asked me about affiliated contracts
3 and, at the time, if you look at the transcript, I
4 said I didn't know, because I didn't.

5 JUDGE SCHAER: Where are you referring to,
6 please?

7 MS. ENDEJAN: I'm referring to the
8 transcript. If you look at the transcript of the
9 December 20th hearing, you said -- you asked me about
10 if there were any affiliates. And I said, I don't
11 know as I sit here, Your Honor.

12 JUDGE SCHAER: Can you tell me what page
13 you're on, please?

14 MS. ENDEJAN: Page 126, lines nine through
15 25. I said, I don't know. If there are any
16 arrangements, they would have been on file with the
17 Commission. And as a matter of fact, Professor
18 Selwyn found or had this information in his
19 possession, as I demonstrated in our response
20 yesterday. In responding to one of our data
21 requests, he said that he found the posted agreement
22 on the Internet dealing with the relationship between
23 Verizon -- well, that governs -- the contract that
24 governs the provision of services to Verizon Long
25 Distance. He had this information in his possession.

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1 And you know, I didn't know that, and I
2 also didn't know the status of what affiliate
3 contracts are on file. I believe they're publicly
4 filed. AT&T just is not being deprived of anything
5 by not having gone to look to see if they were on
6 file.

7 Clearly, it's not a sanctionable offense to
8 not provide something that I didn't know we had and I
9 didn't tell the Commission we had.

10 If you go through the rest of the record,
11 what you'll find is you asked me to, and I agreed to
12 go back to determine to the extent to which documents
13 were within Verizon Northwest's custody, possession
14 or control. And for instance, on page 133, lines 14
15 through 16, there's another portion of the record,
16 page 130, I said I'd be happy to check with the toll
17 people at Verizon.

18 You know, I don't think that the discussion
19 that occurred at this hearing in any way rises to the
20 sort of, quote, active misrepresentation that AT&T
21 alleges here. I think if you put it in context, I
22 was voicing my concerns about having to provide the
23 universe of information that a very
24 broadly-questioned data request was directed at,
25 Number 34.

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1 Now, had Mr. Kopta, in talking about Number
2 70 or 71, said, Hey, Judy, this is the way we want
3 you to respond to Number 34, that would have raised a
4 whole different response, because I would have said,
5 Oh, okay, that's why you think it's relevant here;
6 you're not claiming you're going to use it because of
7 cross-examination of Mr. Fulp because of his stricken
8 testimony. We would have looked at it in a different
9 light.

10 And I think if you look at Mr. Kopta's --
11 two things flow from the December -- or three things
12 flow from the December hearing. The first thing that
13 flows is all of the data requests that he filed the
14 motion to compel on, with the exception of Number 34,
15 we did respond to and we did supplement. You don't
16 hear him complaining about that today.

17 The only one that's outstanding is this
18 Number 34, which I will represent to you we discussed
19 off the record and he agreed to rephrase. So
20 therefore, we took no further action pending action
21 from AT&T.

22 I think if you look at what Mr. Kopta said
23 at the very end of the hearing on December 19th, he
24 said we had, you know, we summarized our discussions
25 off the record, I think the results of those

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1 discussions, as well. He said we discussed
2 individual outstanding data requests and we've come
3 to an understanding. He specifically said there's no
4 need for you to make any ruling on a specific
5 outstanding data request, so you didn't. There's no
6 specific ruling compelling us to respond to Data
7 Request Number 34.

8 So I think given the, how shall we say,
9 ambiguous and unclear state of the record on Data
10 Request Number 34, I think that it would be entirely
11 inappropriate to find that we deliberately avoided
12 responding to it and certainly there is no basis for
13 the imposition of sanctions whatsoever.

14 Finally, I might add, we've responded to
15 the data requests that he wants. If he wants me to
16 call up and see if I can find the invoices today that
17 are in a box somewhere possibly in Texas, I'm happy
18 to do that. I didn't know about that problem until
19 today.

20 So Your Honor, I don't know what else to
21 state, except that we have complied with 70 and 71,
22 we shouldn't be ordered to respond to Number 34,
23 given the fact that we had an understanding in
24 December, he was going to rephrase it, he didn't
25 rephrase it. If he now takes the position, which he

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1 apparently has in his pleadings, that 70 and 71 were
2 intended to replace 34, well, then, fine. That's
3 fine. We've responded to them. And there's no basis
4 for any order compelling us to do something that
5 we're doing.

6 So I would respectfully request you to just
7 deny the motion, deny the request for sanctions.
8 There's nothing -- there's nothing here but a
9 complete, I think, failure of communication, which
10 probably isn't the first time that this has occurred
11 in this case, unfortunately. I mean, it hasn't
12 exactly proceeded down the straightest path. So
13 given that, Your Honor, I would conclude my remarks.

14 JUDGE SCHAER: Let's go off the record for
15 a moment to allow the reporter to change paper.

16 (Recess taken.)

17 JUDGE SCHAER: Back on the record. Go
18 ahead, Mr. Kopta.

19 MR. KOPTA: Thank you, Your Honor. What
20 I'd like to do in response is to have -- draw the
21 Bench's attention to what's been marked for
22 identification as Exhibit 217, which is AT&T Data
23 Request Number 34. I think it's helpful to look at
24 the language in this data request.

25 JUDGE SCHAER: Let me ask you, is that

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1 something that was distributed today?

2 MR. KOPTA: It was distributed today. It
3 was also, I'm sure, attached to our original motion
4 to compel, but --

5 JUDGE SCHAER: Okay. Does it have some
6 confidential information?

7 MR. KOPTA: I'm sorry?

8 JUDGE SCHAER: Does it have confidential
9 information?

10 MR. KOPTA: No, it does not. And we've
11 also, at least with respect to the language of the
12 request itself, copied it into our second motion to
13 compel.

14 JUDGE SCHAER: Okay. Go ahead, please.

15 MR. KOPTA: Subpart A reads -- or actually,
16 the data request asks for the following information,
17 and subpart A states, All services and facilities
18 that Verizon Long Distance, Verizon Enterprise
19 Solutions and Verizon Select Services, Inc. obtain on
20 a resale basis and use to provide toll service to
21 their end user customers. Subpart B, The rates that
22 these same affiliates pay for those services and
23 facilities and any terms or conditions that affect
24 those rates. Subpart D, all services and facilities
25 provided or functions performed or shared by Verizon

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1 Northwest to, for, with the various affiliates
2 related to their providing of toll services,
3 including, but not limited to operating, installation
4 and maintenance, OI&M, administrative, finance, human
5 resources, legal and accounting services.

6 Now, if you look at the transcript of the
7 December 19th hearing, on page 120, lines 15 through
8 25, Counsel for Verizon states, with respect to Data
9 Request Number 34, and I quote, This best illustrates
10 the problems we have with responding with the data
11 request, as phrased.

12 We answered, The only relevant question
13 here, which called for us to identify or respond
14 about the services that Verizon Northwest, Inc. has.
15 That's what the question called for. What does
16 Verizon Northwest, Inc. share with any of its
17 affiliates. We answered that question. Subparts A,
18 B, C, and E all called for the type of affiliate
19 information that we do not possess and we don't
20 control and we should not have to provide.

21 Verizon provides toll service to its
22 affiliate on a resale basis. That's directly
23 responsive to subpart A. Verizon has that
24 information in its control, had it in its control in
25 December at this hearing. This representation is

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1 false.

2 Subpart D, all services and facilities
3 provided by Verizon Northwest to its affiliates,
4 including, but not limited to all of these services.
5 Verizon provides toll service to its affiliate.
6 Verizon provides joint marketing services to its
7 affiliate. That is directly responsive to this
8 question. Verizon represented that it did not have
9 that information. That representation was false.

10 Whatever agreement that we had was based on
11 my understanding that Verizon did not provide any
12 services to its affiliates, but rather it would try
13 to provide whatever information it could on services
14 that they obtained from a joint source. That's the
15 basis of the agreement. That's why we didn't follow
16 up, because we didn't see that as a critical point to
17 our case.

18 Had we known that Verizon provides the
19 underlying toll service to its affiliate, we
20 certainly would have followed up. Had we known at
21 that time that Verizon provides joint marketing
22 services to its affiliate, we would have followed up.
23 As it happens, Dr. Selwyn, in doing some research,
24 came across an agreement on the Web site for Verizon
25 that it has a general joint marketing agreement with

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1 its affiliate. The fact that we discovered this
2 outside this process doesn't mean that we somehow got
3 this information and so we don't need it from
4 Verizon. That doesn't have anything to do with this
5 issue.

6 The point is that the information was out
7 there and available, Verizon represented that it did
8 not have that information, and it did not provide it
9 to us. The fact that we may have been able to find
10 it somewhere else is irrelevant. We asked for it
11 first from Verizon, and they said they didn't have
12 it, and that simply was not true.

13 This is not a classic case of lack of
14 communication. This is a classic case of a company
15 refusing to respond to a legitimate data request.

16 As for the fact that this is the first time
17 that Verizon has found out that Data Request Number
18 70 is deficient, let's take a look at Data Request
19 Number 70, which is quoted in the second motion to
20 compel, beginning on page two. There's a reference
21 to Mr. Fulp's surrebuttal testimony, and the request
22 asks, Please identify all marketing and joint
23 marketing services that Verizon Northwest, Inc.
24 provided to Verizon Long Distance or any other
25 Verizon affiliate in Washington for calendar year

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1 2002, and identify the amount that Verizon Long
2 Distance or the Verizon affiliate paid to Verizon
3 Northwest, Inc. for such service. Please include all
4 contracts, invoices, or other documents quantifying,
5 verifying or otherwise substantiating those services
6 and amounts paid.

7 I don't see how it could be any clearer
8 that we also want supporting documentation. Verizon
9 didn't provide it. In light of the history of this
10 case, as well as the very short time that we have
11 before hearings, there didn't seem to be any point in
12 asking Verizon to come up with additional information
13 that we've already asked and repeatedly asked to
14 obtain, only to be stonewalled until the last minute
15 before the hearing.

16 So that's why we want an order from the
17 Commission. Maybe that will be sufficient to get
18 Verizon to respond to our data requests, because we
19 haven't been able to do it on our own.

20 JUDGE SCHAER: Ms. Endejan, did you have
21 anything further?

22 MS. ENDEJAN: Your Honor, I just -- I have
23 to point out to you the text that he read illustrates
24 my argument completely. I said, We had a problem
25 with the way the data request was phrased. That says

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1 it right there. The way we read this data request,
2 it was calling for us to provide information for all
3 services provided by these three entities, everywhere
4 across the country, from who and where. It is not
5 limited by just -- by what Verizon Northwest provides
6 to these entities. That's why I asked Mr. Kopta to
7 rephrase it in a way I could take it back to my
8 client so that we could answer it.

9 It was our understanding, the way we read
10 this data request, that we did not have -- Verizon
11 Northwest did not have, nor could it get information
12 regarding all services and facilities that Verizon
13 Long Distance obtains at a resale basis and uses to
14 provide toll service to their end user customers.

15 Does that mean services and facilities they
16 obtain on a resale basis in the state of New York, in
17 the state of Connecticut? I mean, it was worded
18 poorly, and I pointed that out in our off-the-record
19 discussions. And so now to come in here and accuse
20 me of misrepresenting the condition of things to this
21 Commission when they sat on their hands for three
22 months knowing that we were -- we would have
23 responded. We showed that we responded, because we
24 gave them supplemental responses to every other data
25 request but Number 34, which is pretty telling that

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1 the reason we didn't is because we -- there was an
2 action item outstanding and we didn't want to do
3 anything until we had that. And had Mr. Kopta said
4 to us, Replace Number 34 and 70 and 71, that would
5 have made a huge difference.

6 I also want to point out that we do have
7 sort of a threshold question here about whether or
8 not we should even have to respond to 70 and 71, if
9 it goes to stricken testimony. I think that's a real
10 serious issue, and we are willing to respond -- we
11 have responded to that. And now he wants, I guess,
12 boxes of invoices to verify what we provided in
13 response to a data request that goes to testimony
14 that is stricken that they can't cross-examine about.
15 I mean, I fail to see the purpose here.

16 But I would emphasize that it is not my
17 pattern or practice, nor do I take lightly being
18 accused making a misrepresentation to any body or
19 court. I don't do that. I state things the way I
20 understand them to be. And as I understood it in
21 December, what was being called for in Number 34 was
22 so far beyond the pale regarding affiliate
23 information about the activities of these other
24 entities that I -- we did not have possession or
25 control over everything that Verizon Long Distance

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1 does.

2 Now we have -- we have since, in good
3 faith, supplemented the information regarding what
4 Verizon Northwest does with its affiliates. So I
5 just -- I take great umbrage with any claim that I've
6 made a misrepresentation to this Commission.

7 And as far as Number 34 goes, I still don't
8 know how we can respond to this if you ordered us to
9 respond to it. Would we have to come up with
10 information regarding services and facilities these
11 entities obtain on a resale basis in other states
12 across the country? This is not a properly-drafted
13 data request and we would -- we will and have given,
14 in the information that he's marked as -- I don't
15 know what the numbers are, the retail marketing and
16 sales agreement, which appears to be their concern.
17 They have it. I don't know what they can use it for
18 now, given the state of the record and Mr. Fulp's
19 stricken testimony, but I certainly see no basis for
20 ordering us to respond to Number 34.

21 We will -- if Mr. Kopta wants boxes of
22 invoices for 70, I will make a call over the lunch
23 hour to get the boxes of the invoices. Number 71,
24 I'm advised by my client that we have responded. I
25 haven't seen the response, so I don't know whether

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1 it's sufficient or not, but I certainly do not think
2 that there's any basis for entering an order
3 compelling us to do anything in connection with these
4 data request responses.

5 And I'm very, very disappointed in Mr.
6 Kopta's failure to acknowledge that maybe, in the
7 press of business, that maybe he dropped the ball on
8 that and didn't call me and say, Hey, about Number
9 34. I mean, we've had a good professional working
10 relationship and I have the utmost respect for Mr.
11 Kopta. I think that this is just an unfortunate
12 situation where miscommunication and lack of
13 follow-through led to the condition here. It is not
14 Verizon deliberately thwarting any ruling or order or
15 requirement of the Commission.

16 To the contrary, Verizon has demonstrated,
17 by responding in supplementing its responses that,
18 Okay, we agreed to supplement it, we'll supplement
19 it. So that tells me we would have supplemented
20 Number 34 had it been reasked in a way that narrowed
21 it and tied the questions to Verizon Northwest, Inc.
22 So I guess I have nothing more to say, Your Honor.

23 JUDGE SCHAER: Ms. Endejan, which document
24 were you reading from a few moments ago? Were you
25 reading from Number 34 or from Number 71?

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1 MS. ENDEJAN: I was reading from Number 34.

2 JUDGE SCHAER: Just a factual check.

3 Number 34 was sent before Mr. Fulp filed his
4 surrebuttal; is that correct?

5 MS. ENDEJAN: Yes, this has been
6 outstanding for a while.

7 JUDGE SCHAER: Okay. I've been reviewing
8 the transcript of the December 12th hearing, because
9 my recollection of that hearing was that AT&T's last
10 motion to compel Verizon to answer this data request
11 had been granted. And in reviewing this document, I
12 have to tell you that that's again my impression.

13 I remember that you and I discussed Civil
14 Rule 34 and Evidence Rule 34, and the
15 responsibilities of your client to not only search
16 for items that they knew they had, but to find out
17 what they could get easily to accommodate AT&T and to
18 provide those items.

19 And I -- we start this discussion --
20 there's earlier discussion, but especially at page
21 122 of the transcript. And I had asked you on page
22 123 of the transcript whether you or someone at your
23 direction had confirmed that none of the other
24 documents sought by Number 34 were in the possession
25 of Verizon Northwest. And I believe you indicate in

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1 your answer that if the information had called for
2 information about the affiliates, that that was
3 correct. You had not asked for that information.
4 And I confirmed that you did not have this in your
5 possession, and I believed that. There's never been
6 a question of that.

7 Then I asked you if any of these documents
8 are in some form in the custody of Verizon Northwest.
9 You said no. Finally, I asked you about control, and
10 again, we discussed references to federal practice
11 and procedure, which you had cited in your response
12 to the motion. And I pointed out to you that one of
13 the cases cited there indicates the production of
14 documents not in parties' possession is required if
15 the party has the practical ability to obtain the
16 documents from another, irrespective of legal
17 entitlement to the documents. Do you recall that
18 discussion?

19 MS. ENDEJAN: I'm reading the transcript,
20 Your Honor.

21 JUDGE SCHAER: Okay. And then I asked you
22 if you had checked or had someone checked to see if
23 Verizon Northwest had the practical ability to obtain
24 any of the documents, and I asked that just as a
25 factual question. I wanted to know if that had been

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1 done.

2 And then my recollection is that what I
3 ordered you to do was to go back and ask that
4 question. And if you found those records, if anyone
5 could get you those records, that you provide them to
6 AT&T. And I'm not going to read the transcript to
7 you, but there is a finding in here that all of the
8 data requests that -- before the Commission on a
9 motion to compel were relevant.

10 There was specific discussion of this. And
11 the bottom of page 138 reflect that I say that I'm
12 asking Verizon to provide AT&T all of the data
13 described in these questions which is within its
14 possession, custody and control, and we'd already
15 discussed what those three words meant. And I'm
16 asking Verizon, in providing information, that is, if
17 there's information which is filed with the
18 Commission that is filed with some kind of
19 confidentiality claim and you had it in a way that
20 you could provide it more conveniently to AT&T, that
21 you do that.

22 And is there something about what I --
23 that's my recollection of what happened, that you
24 have already been ordered to provide this
25 information, to make these inquiries and provide this

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1 information.

2 MS. ENDEJAN: Your Honor, I think that with
3 respect to Number 34, your ruling is very generic.
4 It is not tied specifically to Number 34; it's tied
5 to all of the data requests that were at issue. And
6 again, I did go back and we did supplement them and
7 there was -- and I don't know, and I -- it was part
8 of the off-the-record discussion that 34 would be
9 clarified, rephrased by AT&T, and we would respond.
10 We never intended to not respond to Number 34. What
11 we thought we had agreed to at the discussion was we
12 would get a rephrased Number 34 and then we would
13 respond to it, consistent with your ruling.

14 That was our understanding of what came out
15 of that hearing. And as you yourself noted and as
16 Mr. Kopta noted, there was no ruling on any specific
17 outstanding data request. And as Mr. Kopta stated,
18 we had come to an understanding that the type of
19 information that will be provided or at least will be
20 investigated.

21 So leaving that hearing, there was -- there
22 were certain, I think, responsibilities to
23 communicate on both parties' sides to make sure that,
24 to the extent there was information Verizon could
25 respond with, it would do so, and we did do so, with

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1 the exception of Number 34.

2 So I clearly think there has been a
3 misunderstanding about -- about Number 34 from the
4 get-go in terms of what we understood it was asking
5 for and in terms of what AT&T agreed to do to clarify
6 the request.

7 JUDGE SCHAER: Well, I note that there is
8 specific discussion of certain of these requests
9 starting at page 134 of the transcript, and that on
10 page 135 at the bottom there is discussion of Data
11 Request Number 34, and there is discussion of AT&T's
12 concern that the answer given was only a partial
13 answer.

14 MR. KOPTA: I think that this is another
15 point at which I think it's clear what the
16 representation was during this hearing. If you look
17 at page 135, beginning on line 17, and this is me
18 talking, much of Number 34 would go under the same
19 category, referring to some earlier data requests,
20 except to the extent that Verizon itself provides any
21 of these services, although Verizon has stated that
22 it does not.

23 I think I clearly reflected what Verizon
24 had represented at that motion hearing, and so to say
25 that we agreed to rephrase the data request, it was

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1 based on our understanding that Verizon didn't
2 provide any of these services, because that was the
3 representation.

4 So if we had provided a revised data
5 request, it would have actually excluded the
6 information that Verizon has and refused to provide.
7 And no doubt if we came here and raised this issue
8 now, Verizon would have said, Well, you rephrased
9 Number 34, so we didn't think you wanted the
10 information anymore.

11 The bottom line is I'm not making any
12 allegations about Ms. Endejan. I have no reason to
13 believe that she made a knowingly false
14 representation. But somebody did. Somebody
15 responded to our data request that they didn't have
16 the information, and they did. Somebody within
17 Verizon, because it's Verizon that has the
18 information. I don't know whether Ms. Endejan has
19 it, but certainly Verizon does in their headquarters
20 in Everett, because it's intrastate toll services,
21 and they said they don't have it. They didn't
22 provide that.

23 MS. ENDEJAN: Your Honor, then why would we
24 have -- why would I have agreed with Mr. Kopta, if he
25 would rephrase the question Number 34 to get at this,

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1 why would I agree to go back and investigate it
2 further and try to find out? I mean, Number 34 was
3 left hanging with an understanding between the two of
4 us, and I should have -- and I will never, ever not
5 -- have an off-the-record discussion where I don't
6 recite in detail the agreements reached between the
7 parties, so that there's never this misunderstanding.

8 And if you look at Number 34(d), the way it
9 is phrased, it does not -- it calls for the
10 provisioning of certain services relating to
11 operating, installation and maintenance,
12 administrative, finance, human resources, legal and
13 accounting services. It does not ask about marketing
14 and sales. The response given by Verizon to AT&T is
15 that Verizon Northwest does not provide operating,
16 installation and maintenance or finance, human
17 resources, legal or accounting services.

18 And I explained that to Greg at the hearing
19 in December, and I said if you're -- you know, and I
20 don't recall my exact words, but if it had to do with
21 marketing or sales or other toll services, you know,
22 rephrase the question in a way that I know what
23 you're talking about. There was truly genuine
24 confusion about this here, and actually, it could
25 have been cleared up, I think, if there had been a

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1 connection made between Numbers 70 and 71 and Number
2 34, and there wasn't. So consequently, we had no
3 reason to understand or to believe that they were
4 asking for -- that those were going to be the
5 rephrased Number 34.

6 So I guess I don't think you can find,
7 under these facts, that we deliberately flouted an
8 order of the Bench when we were operating under the
9 understanding that we would respond once we had had
10 it rephrased, because we did so for the -- we
11 responded for the other ones.

12 We had an agreement off the record, we
13 worked it out, we gave him the information, there was
14 a to do thing for AT&T, and then it fell through the
15 cracks. I'm not saying it's good, bad or
16 indifferent; I'm just explaining that that's how we
17 perceived the scenario. And it's not going to take
18 an order from this court to get us to provide the
19 information they're seeking, because in 70 and 71,
20 we've provided it. So I --

21 JUDGE SCHAER: Well, here's what I think we
22 should do at this point. I believe you've already
23 had one instruction, one granting of a motion to
24 compel, and I am going to again affirm the motion to
25 compel an answer to Data Request Number 34. I'm

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1 going to ask Verizon to read this transcript
2 carefully, to study the federal rules carefully, and
3 to look for anything in its possession, custody and
4 control, reading control very broadly, as the federal
5 cases do, and I'm asking -- going to ask you to
6 provide that information to AT&T.

7 And I want them to have that by Monday at
8 noon, because they need to have some time to work
9 with it, and I know we're getting close to the
10 hearing and I know this is going to be burdensome on
11 both parties.

12 In my personal experience and this hearing,
13 I have never had any question but that Ms. Endejan
14 was absolutely honorable, and I don't think that
15 there was any deliberate misleading of anyone here.
16 I think that perhaps her questions were not answered,
17 perhaps they weren't explained in these terms so that
18 someone did not wish to understand them and provide
19 that information.

20 I don't know how this mixup happened. I
21 know it did. But the only thing that makes sense to
22 me at this point is to get it fixed as quickly as we
23 can. And I'm not going to suggest that we have any
24 sanctions at this point. Now, if we have any
25 problems getting this response or getting this

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1 response in a timely fashion or getting cooperation
2 on follow-up information, taking into account that
3 the hearing in this matter starts next Wednesday,
4 then that's going to cause a grave concern, because
5 that's going to start to look like uncooperative
6 behavior. But right now, I would not think that
7 there is a need to impose sanctions.

8 Are there any questions from any of the
9 parties?

10 MR. KOPTA: No, thank you, Your Honor.

11 MS. ENDEJAN: No, thank you, Your Honor.

12 JUDGE SCHAER: Thank you. Okay. Now we're
13 down to Number Six. And we have before us at this
14 point a motion for reconsideration, we have a motion
15 for reconsideration. I feel like I'm in one of those
16 loops.

17 MS. ENDEJAN: Yeah, so do I.

18 JUDGE SCHAER: And this has been, I think,
19 a procedurally challenging case for everybody
20 involved and I appreciate that everybody involved has
21 behaved very professionally and we are able to
22 continue with our work.

23 Basically, what I wanted to do here is ask
24 if there was anything any party wanted to add to this
25 brief discussion and, otherwise, move on to Number

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1 Seven, where I have a couple of more questions that I
2 would like to ask the company, and then see if there
3 are any other questions, concerns, the parties want
4 to raise.

5 So on Number Six, is there anything further
6 you wanted to say about your motion for
7 reconsideration, Ms. Endejan?

8 MS. ENDEJAN: No, Your Honor. I think
9 we'll stand on what we filed in writing.

10 JUDGE SCHAER: Is there anything any other
11 party wanted to say in response?

12 MS. JOHNSTON: No, Your Honor, we'll also
13 stand on what we filed on April 29th, 2003.

14 MR. KOPTA: As will we.

15 JUDGE SCHAER: We're now at Number Seven on
16 our agenda. And we received a Verizon motion to
17 dismiss, and I think I saw it Friday. When did it
18 come in, Ms. Endejan?

19 MS. ENDEJAN: What day is it? I believe
20 Tuesday, Your Honor.

21 JUDGE SCHAER: Of this week?

22 MS. ENDEJAN: Yes, Your Honor.

23 JUDGE SCHAER: Okay. And I want to ask you
24 a couple questions, first, just about the timing of
25 this motion. In fact, we go to our procedural rules.

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1 We do have rules about motions and how long people
2 have to answer them and how long before a hearing
3 they should be made, and I would like you to just
4 walk me through what your thinking was on filing this
5 at this time, because my inclination right now is to
6 perhaps just have this considered along with the
7 hearing and have it briefed at the end of the
8 hearing, because we all have a lot going on right
9 now, but let's take a minute to find the motion rule
10 and --

11 MS. ENDEJAN: Your Honor, if I might
12 highlight the procedural rule that we relied upon in
13 filing this motion, it's WAC 480-09-736(14), which
14 indicate -- it states, Parties must file petitions or
15 motions seeking the dismissal of any party or any
16 portion of a proceeding or any other pleading that,
17 in a moving party's judgment, requires the submission
18 of a written motion, petition, brief or statement of
19 authorities and serve them on other parties no later
20 than one week prior to the first scheduled hearing
21 session after grounds for the petition or motion
22 become apparent. The Commission may approve later
23 filing upon a showing of good cause. A party
24 answering such pleading shall file an answer and
25 serve it on other parties at least three days prior

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1 to the hearing. The Commission may allow oral
2 argument in the Commission's discretion. Then it
3 says, Parties must serve pleadings so as to effect
4 actual receipt within the required time.

5 It was our thinking, Your Honor, that we
6 would proceed according to that rule and that the
7 parties would file their answers three days prior to
8 the hearing, and that perhaps at the beginning of the
9 hearing, the Commission hear oral argument on it.

10 You know, obviously, if you prefer to set
11 time limits on oral argument -- because if, in fact,
12 the Commission finds there are grounds, which we
13 submit there are, for dismissing a good portion of
14 the case, it would seem that we should get that
15 matter resolved before proceeding through a lengthy
16 hearing, as opposed to dealing with it afterwards.

17 And the reason that the motion was brought
18 is the Washington Supreme Court handed down its
19 decision, which I guess I don't know what you'd call
20 it, reinstated or reestablished the access charge
21 rule in March. Then we had, I think, the period of
22 limbo, where we thought we were operating under
23 theory of settlement, and then in April it became
24 clear that we were not, and we filed the motion
25 accordingly.

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1 That's the reason for the timing and I
2 think that would be the approach that we would
3 advocate for dealing with the motion.

4 JUDGE SCHAER: Okay. In making this
5 decision, did you look at anything like 480-09-426
6 and the kinds of time lines that are set out for
7 summary disposition?

8 MS. ENDEJAN: Bear with me. This is --
9 because this is such an odd procedural case, I'm not
10 really quite certain what beast this is. It's both a
11 motion to dismiss and it's a motion for summary
12 disposition and it is something that would be
13 dispositive on a large portion of the case were the
14 Commission to rule upon it, so we felt that the
15 rules, as drafted, accommodated for the approach that
16 we were going to take.

17 Our interpretation of the rules, obviously,
18 may be subject to, you know, the Commission's
19 interpretation of how it wishes to proceed. And it
20 depends upon how you want to characterize the motion,
21 because, basically, what we're trying to say to the
22 Commission is, Hey, Washington Supreme Court, the
23 access charge rule is back, it's here. If the access
24 charge rule means what it says and the Washington
25 Supreme Court said that it means what it says, then

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1 if our access charges comply with the rule, then we
2 shouldn't be here. And that's sort of a threshold
3 decision or question for the Commission to consider,
4 and that's how we viewed it.

5 JUDGE SCHAER: I'm really asking these
6 questions because I'm not sure what the answers are.
7 I'm going to give other parties a chance to respond,
8 too, and remind them that this hearing's scheduled
9 till 1:00, so -- but looking at WAC 480-09-425,
10 you've already filed one motion to dismiss in this
11 case, haven't you?

12 MS. ENDEJAN: We did.

13 JUDGE SCHAER: And that was filed in
14 accordance with 480-09-425(2)?

15 MS. ENDEJAN: Your Honor, I don't have that
16 motion to dismiss in front of me and I'm not certain
17 what basis we cited. It probably was filed pursuant
18 to 480-09-425(2).

19 JUDGE SCHAER: Okay. Tell me what your
20 thoughts would be -- today's May 1st, it's a
21 Thursday. Your motion was served two days ago. And
22 so it could be heard, what, within five days before
23 the hearing under the WAC that you referred to?

24 MS. ENDEJAN: You mean the one that we
25 relied on?

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1 JUDGE SCHAER: Yes, yes.

2 MS. ENDEJAN: Well, it basically allows the
3 Commission to -- it says the Commission may allow
4 oral argument at the Commission's discretion.

5 JUDGE SCHAER: Mm-hmm.

6 MS. ENDEJAN: So it doesn't establish a
7 time line, Your Honor.

8 JUDGE SCHAER: So you've provided your
9 motion, then you would expect other parties to
10 respond by what date, Tuesday?

11 MS. ENDEJAN: Three days prior to the
12 hearing.

13 JUDGE SCHAER: So that would have to be
14 tomorrow.

15 MS. ENDEJAN: Tomorrow.

16 MS. SINGER NELSON: Tomorrow.

17 JUDGE SCHAER: Okay. And then, if this
18 motion was not resolved and an order not written
19 before next Wednesday, would you expect the hearing
20 to be postponed or what would your expectation be
21 there?

22 MS. ENDEJAN: I think it was our
23 expectation, Your Honor, that we would argue the
24 motion at the commencement of the hearing before the
25 panel, and we did not anticipate immediate action,

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1 unless the Commissioners decided otherwise. You
2 know, we're realistic about, you know, what we think
3 has to happen. But it seems to me that if there is a
4 chance that the Commission would limit the amount of
5 testimony that would have to be heard on whether our
6 access charges are fair, just and reasonable, that
7 might shorten the hearing to deal only with the issue
8 of price squeeze and imputation. They may want to do
9 that. I can't -- obviously, none of us can speak for
10 the Commissioners.

11 But it seems to me that if there was -- if
12 we believed there's a legal basis for the complaint
13 to be dismissed because of the recent Supreme Court
14 ruling, it's a matter that should be dealt with as
15 expeditiously as possible.

16 JUDGE SCHAER: I'm going to ask the other
17 parties to provide their thoughts, as well, instead
18 of -- because the time lines are so short that I
19 think it may be more fair than asking you to write
20 something down by tomorrow.

21 MR. KOPTA: Well, I --

22 MS. JOHNSTON: Are you suggesting that we
23 address the merits of the motion today or just talk
24 about, procedurally, how we're prejudiced and
25 severely disadvantaged by this late filing?

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1 JUDGE SCHAER: Well, it kind of sounds like
2 the same thing when you put it like that, Ms.
3 Johnston, but I think I was looking for your advice
4 of whether the Commission should proceed with the
5 motion now or what procedure we should follow?

6 MS. JOHNSTON: Well, I would like to state
7 for the record that it's Commission Staff's position
8 that taking up this motion at this late time will, in
9 fact, disadvantage and severely prejudice the parties
10 in their preparation for the hearings. As you
11 stated, the hearings are scheduled to begin next
12 week.

13 I'd also like to point out that the access
14 charge rule was reinstated by the State Supreme Court
15 six weeks ago. Verizon waited weeks to file this
16 motion and the company should not be permitted to
17 disadvantage other parties by forcing them to address
18 the merits of this motion at this late hour. This
19 late filing is actually contrary to a rule relied
20 upon by Verizon insofar as the, quote, unquote,
21 grounds for petition or motion became apparent, end
22 quote, more than six weeks ago.

23 So aside from addressing the merits,
24 although I will say that Staff believes that the
25 motion has no merit whatsoever, we would ask that the

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1 Commission carry the motion with the case for a
2 couple of reasons. First, there is prefiled
3 testimony concerning the access charge rule that's
4 been filed with the Commission, and the Commission
5 itself may want evidence that relates to issues
6 brought up in Verizon's late motion in the record.

7 So I just would like to reiterate that we
8 have a strong preference that the motion be carried
9 with the case and addressed on brief.

10 JUDGE SCHAER: Ms. Singer Nelson.

11 MS. SINGER NELSON: MCI/WorldCom would join
12 in Staff's comments and Staff's resolution. I don't
13 need to add anything to it. I just agree with
14 everything that -- I do agree with everything that
15 Staff has said.

16 JUDGE SCHAER: Okay. Mr. Kopta.

17 MR. KOPTA: We also concur with Commission
18 Staff's comments. Our preference would be that it be
19 dismissed and that Verizon would be able to raise
20 this legal argument, as they can any other legal
21 argument, in their brief. Barring that, then
22 carrying the motion and having it briefed along with
23 the case in chief is the next best alternative, but
24 certainly waiting until this point to drop a motion
25 like this I don't think is consistent with the spirit

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1 of the Commission's rules regardless of how one reads
2 the letter of those rules.

3 And also, with respect to the merits, we --
4 you know, we would rather address those when we've
5 had a chance to do that in light of the testimony and
6 the other evidence presented in this proceeding, but
7 in any event, we agree with Commission Staff that it
8 has no merit.

9 JUDGE SCHAER: Ms. Endejan, anything else
10 you'd like to add?

11 MS. ENDEJAN: I think I've said more than
12 enough this morning.

13 JUDGE SCHAER: Okay. Then we're -- go
14 ahead.

15 MS. JOHNSTON: I have nothing more to add,
16 Your Honor.

17 JUDGE SCHAER: Okay. We're at the point in
18 the agenda we've covered the seven points that I had
19 set out. Is there anything else anyone wanted to
20 bring up this morning?

21 MR. KOPTA: Just as a follow-up on -- I
22 know that we're just sort of discussing this motion,
23 but if we are operating according to the procedural
24 rule Verizon states, we would need to have a response
25 before the close of business tomorrow, so we would

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1 like to know as soon as possible, so that if we have
2 to file a response, we can do so before the end of
3 the day tomorrow.

4 MS. ENDEJAN: Your Honor, I would just like
5 to request formally on the record for leave on next
6 -- during next Thursday's hearing, on May 8th, from
7 1:30 to 2:00. I need to participate in a conference
8 call from the Washington Supreme Court, and I would
9 respectfully request that that time period -- that I
10 be allowed to be excused and that that time period be
11 accommodated.

12 JUDGE SCHAER: Okay. I've previously
13 indicated to you that I don't think that will be a
14 problem, Ms. Endejan. And I will tell you, Mr.
15 Kopta, that I think you can expect a response by the
16 end of today.

17 MR. KOPTA: Thank you, Your Honor.

18 JUDGE SCHAER: You're welcome. Is there
19 anything else before we adjourn?

20 MS. ENDEJAN: No.

21 JUDGE SCHAER: Thank you all for your hard
22 work this morning. We're off the record.

23 MS. ENDEJAN: Thank you.

24 MR. KOPTA: Thank you.

25 (Hearing adjourned 12:33 p.m.)